

107TH CONGRESS
2D SESSION

H. R. 4623

To prevent trafficking in child pornography and obscenity, to proscribe pandering and solicitation relating to visual depictions of minors engaging in sexually explicit conduct, to prevent the use of child pornography and obscenity to facilitate crimes against children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2002

Mr. SMITH of Texas (for himself, Mr. POMEROY, Mr. FOLEY, Ms. HART, Mr. DELAY, Mr. BRYANT, Mr. GOODLATTE, Mr. JENKINS, Mr. CANNON, Mr. GREEN of Wisconsin, Mr. KELLER, Mrs. JOHNSON of Connecticut, Mr. STEARNS, Mr. NUSSLE, Mrs. CAPITO, Mr. GILCHREST, Mr. CULBERSON, Mr. WELLER, and Mr. UPTON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prevent trafficking in child pornography and obscenity, to proscribe pandering and solicitation relating to visual depictions of minors engaging in sexually explicit conduct, to prevent the use of child pornography and obscenity to facilitate crimes against children, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Child Obscenity and
3 Pornography Prevention Act of 2002”.

4 **SEC. 2. IMPROVEMENTS TO PROHIBITION ON VIRTUAL**
5 **CHILD PORNOGRAPHY.**

6 (a) Section 2256(8)(B) of title 18, United States
7 Code, is amended to read as follows:

8 “(B) such visual depiction is a computer
9 image or computer-generated image that is, or
10 appears virtually indistinguishable from, that of
11 a minor engaging in sexually explicit conduct;
12 or”.

13 (b) Section 2256(2) of title 18, United States Code,
14 is amended to read as follows:

15 “(2)(A) Except as provided in subparagraph
16 (B), ‘sexually explicit conduct’ means actual or
17 simulated—

18 “(i) sexual intercourse, including genital-
19 genital, oral-genital, anal-genital, or oral-anal,
20 whether between persons of the same or oppo-
21 site sex;

22 “(ii) bestiality;

23 “(iii) masturbation;

24 “(iv) sadistic or masochistic abuse; or

25 “(v) lascivious exhibition of the genitals or
26 pubic area of any person;

1 “(B) For purposes of subsection 8(B) of this
2 section, ‘sexually explicit conduct’ means—

3 “(i) actual sexual intercourse, including
4 genital-genital, oral-genital, anal-genital, or
5 oral-anal, whether between persons of the same
6 or opposite sex, or lascivious simulated sexual
7 intercourse where the genitals, breast, or pubic
8 area of any person is exhibited;

9 “(ii) actual or lascivious simulated;

10 “(I) bestiality;

11 “(II) masturbation; or

12 “(III) sadistic or masochistic abuse;

13 or

14 “(iii) actual or simulated lascivious exhi-
15 bition of the genitals or pubic area of any per-
16 son;”.

17 (c) Section 2252A(c) of title 18, United States Code,
18 is amended to read as follows:

19 “(c)(1) Except as provided in paragraph (2), it shall
20 be an affirmative defense to a charge of violating this sec-
21 tion that the alleged offense did not involve child pornog-
22 raphy produced using a minor engaging in sexually explicit
23 conduct or an attempt or conspiracy to commit an offense
24 involving such child pornography.

1 “(2) A violation of, or an attempt or conspiracy
 2 to violate, this section which involves child pornog-
 3 raphy as defined in section 2256(8)(A) or (C) shall
 4 be punishable without regard to the affirmative de-
 5 fense set forth in paragraph (1).”.

6 **SEC. 3. PROHIBITION ON PANDERING MATERIALS AS**
 7 **CHILD PORNOGRAPHY.**

8 (a) Section 2256(8) of title 18, United States Code,
 9 is amended—

10 (1) by inserting “or” at the end of subpara-
 11 graph (B);

12 (2) in subparagraph (C), by striking “or” at
 13 the end and inserting “and”; and

14 (3) by striking subparagraph (D).

15 (b) Chapter 110 of title 18, United States Code, is
 16 amended—

17 (1) by inserting after section 2252A the fol-
 18 lowing:

19 **“§ 2252B. Pandering and solicitation**

20 “(a) Whoever, in a circumstance described in sub-
 21 section (d), offers, agrees, attempts, or conspires to pro-
 22 vide or sell a visual depiction to another, and who in con-
 23 nection therewith knowingly advertises, promotes, pre-
 24 sents, or describes the visual depiction with the intent to
 25 cause any person to believe that the material is, or con-

1 tains, a visual depiction of a minor engaging in sexually
2 explicit conduct shall be subject to the penalties set forth
3 in section 2252A(b)(1), including the penalties provided
4 for cases involving a prior conviction.

5 “(b) Whoever, in a circumstance described in sub-
6 section (d), offers, agrees, attempts, or conspires to receive
7 or purchase from another a visual depiction that he be-
8 lieves to be, or to contain, a visual depiction of a minor
9 engaging in sexually explicit conduct shall be subject to
10 the penalties set forth in section 2252A(b)(1), including
11 the penalties provided for cases involving a prior convic-
12 tion.

13 “(c) It is not a required element of any offense under
14 this section that any person actually provide, sell, receive,
15 purchase, possess, or produce any visual depiction.

16 “(d) The circumstance referred to in subsection (a)
17 and (b) is that—

18 “(1) any communication involved in or made in
19 furtherance of the offense is communicated or trans-
20 ported by the mail, or in interstate or foreign com-
21 merce by any means, including by computer, or any
22 means or instrumentality of interstate or foreign
23 commerce is otherwise used in committing or in fur-
24 therance of the commission of the offense;

1 “(2) any communication involved in or made in
2 furtherance of the offense contemplates the trans-
3 mission or transportation of a visual depiction by the
4 mail, or in interstate or foreign commerce by any
5 means, including by computer;

6 “(3) any person travels or is transported in
7 interstate or foreign commerce in the course of the
8 commission or in furtherance of the commission of
9 the offense;

10 “(4) any visual depiction involved in the offense
11 has been mailed, or has been shipped or transported
12 in interstate or foreign commerce by any means, in-
13 cluding by computer, or was produced using mate-
14 rials that have been mailed, or that have been
15 shipped or transported in interstate or foreign com-
16 merce by any means, including by computer; or

17 “(5) the offense is committed in the special
18 maritime and territorial jurisdiction of the United
19 States or in any territory or possession of the
20 United States.”;

21 (2) in the analysis for the chapter, by inserting
22 after the item relating to section 2252A the fol-
23 lowing:

“2252B. Pandering and solicitation.”.

1 **SEC. 4. PROHIBITION OF OBSCENITY DEPICTING YOUNG**
2 **CHILDREN.**

3 (a) Chapter 71 of title 18, United States Code, is
4 amended—

5 (1) by inserting after section 1466 the fol-
6 lowing:

7 **“§ 1466A. Obscene visual depictions of young children**

8 “(a) Whoever, in a circumstance described in sub-
9 section (d), knowingly produces, distributes, receives, or
10 possesses with intent to distribute a visual depiction that
11 is, or is virtually indistinguishable from, that of a pre-pu-
12 bescent child engaging in sexually explicit conduct, or at-
13 tempts or conspires to do so, shall be subject to the pen-
14 alties set forth in section 2252A(b)(1), including the pen-
15 alties provided for cases involving a prior conviction.

16 “(b) Whoever, in a circumstance described in sub-
17 section (d), knowingly possesses a visual depiction that is,
18 or is virtually indistinguishable from, that of a pre-pubes-
19 cent child engaging in sexually explicit conduct, or at-
20 tempts or conspires to do so, shall be subject to the pen-
21 alties set forth in section 2252A(b)(2), including the pen-
22 alties provided for cases involving a prior conviction.

23 “(c) For purposes of this section—

24 “(1) ‘visual depiction’ includes undeveloped film
25 and videotape, and data stored on computer disk or
26 by electronic means which is capable of conversion

1 into a visual image, and also includes any photo-
2 graph, film, video, picture, or computer or computer-
3 generated image or picture, whether made or pro-
4 duced by electronic, mechanical, or other means;

5 “(2) ‘pre-pubescent child’ means that the child,
6 as depicted, does not exhibit significant pubescent
7 physical or sexual maturation. Factors that may be
8 considered in determining significant pubescent
9 physical maturation include body habitus and mus-
10 culature, height and weight proportion, degree of
11 hair distribution over the body, extremity proportion
12 with respect to the torso, and dentition. Factors that
13 may be considered in determining significant pubes-
14 cent sexual maturation include breast development,
15 presence of axillary hair, pubic hair distribution, and
16 visible growth of the sexual organs; and

17 “(3) ‘sexually explicit conduct’ has the meaning
18 set forth in section 2256(2).

19 “(d) The circumstance referred to in subsections (a)
20 and (b) is that—

21 “(1) any communication involved in or made in
22 furtherance of the offense is communicated or trans-
23 ported by the mail, or in interstate or foreign com-
24 merce by any means, including by computer, or any
25 means or instrumentality of interstate or foreign

1 commerce is otherwise used in committing or in fur-
2 therance of the commission of the offense;

3 “(2) any communication involved in or made in
4 furtherance of the offense contemplates the trans-
5 mission or transportation of a visual depiction by the
6 mail, or in interstate or foreign commerce by any
7 means, including by computer;

8 “(3) any person travels or is transported in
9 interstate or foreign commerce in the course of the
10 commission or in furtherance of the commission of
11 the offense;

12 “(4) any visual depiction involved in the offense
13 has been mailed, or has been shipped or transported
14 in interstate or foreign commerce by any means, in-
15 cluding by computer, or was produced using mate-
16 rials that have been mailed, or that have been
17 shipped or transported in interstate or foreign com-
18 merce by any means, including by computer; or

19 “(5) the offense is committed in the special
20 maritime and territorial jurisdiction of the United
21 States or in any territory or possession of the
22 United States.

23 “(e) In a case under subsection (b), it is an affirma-
24 tive defense that the defendant—

25 “(1) possessed less than three such images; and

1 “(2) promptly and in good faith, and without
2 retaining or allowing any person, other than a law
3 enforcement agency, to access any image or copy
4 thereof—

5 “(A) took reasonable steps to destroy each
6 such image; or

7 “(B) reported the matter to a law enforce-
8 ment agency and afforded that agency access to
9 each such image.”; and

10 (2) in the analysis for the chapter, by inserting
11 after the item relating to section 1466 the following:

“1466A. Obscene visual depictions of young children.”.

12 (b)(1) Except as provided in paragraph (2), the appli-
13 cable category of offense to be used in determining the
14 sentencing range referred to in section 3553(a)(4) of title
15 18, United States Code, with respect to any person con-
16 victed under section 1466A of such title, shall be the cat-
17 egory of offenses described in section 2G2.2 of the Sen-
18 tencing Guidelines.

19 (2) The Sentencing Commission may promulgate
20 guidelines specifically governing offenses under section
21 1466A of title 18, United States Code, provided that such
22 guidelines shall not result in sentencing ranges that are
23 lower than those that would have applied under paragraph
24 (1).

1 **SEC. 5. PROHIBITION ON USE OF MATERIALS TO FACILI-**
2 **TATE OFFENSES AGAINST MINORS.**

3 Chapter 71 of title 18, United States Code, is
4 amended—

5 (1) by inserting at the end the following:

6 **“§ 1471. Use of obscene material or child pornog-**
7 **raphy to facilitate offenses against mi-**
8 **nors**

9 “(a) Whoever, in any circumstance described in sub-
10 section (c), knowingly—

11 “(1) provides or shows to a person below the
12 age of 16 years any obscene matter or child pornog-
13 raphy, or any visual depiction that is, or is virtually
14 indistinguishable from, that of a pre-pubescent child
15 engaging in sexually explicit conduct; or

16 “(2) provides any obscene matter or child por-
17 nography, or any visual depiction that is, or is vir-
18 tually indistinguishable from, that of a pre-pubes-
19 cent child engaging in sexually explicit conduct, or
20 any other material assistance to any person in con-
21 nection with any conduct, or any attempt, incite-
22 ment, solicitation, or conspiracy to engage in any
23 conduct, that involves a minor and that violates
24 chapter 109A, 110, or 117, or that would violate
25 chapter 109A if the conduct occurred in the special

1 maritime and territorial jurisdiction of the United
2 States,
3 shall be subject to the penalties set forth in section
4 2252A(b)(1), including the penalties provided for cases in-
5 volving a prior conviction.

6 “(b) For purposes of this section—

7 “(1) ‘child pornography’ has the meaning set
8 forth in section 2256(8);

9 “(2) ‘visual depiction’ has the meaning set forth
10 in section 1466A(c)(1);

11 “(3) ‘pre-pubescent child’ has the meaning set
12 forth in section 1466A(c)(2); and

13 “(4) ‘sexually explicit conduct’ has the meaning
14 set forth in section 2256(2).

15 “(c) The circumstance referred to in subsection (a)
16 is that—

17 “(1) any communication involved in or made in
18 furtherance of the offense is communicated or trans-
19 ported by the mail, or in interstate or foreign com-
20 merce by any means, including by computer, or any
21 means or instrumentality of interstate or foreign
22 commerce is otherwise used in committing or in fur-
23 therance of the commission of the offense;

24 “(2) any communication involved in or made in
25 furtherance of the offense contemplates the trans-

1 mission or transportation of a visual depiction or ob-
2 scene matter by the mail, or in interstate or foreign
3 commerce by any means, including by computer;

4 “(3) any person travels or is transported in
5 interstate or foreign commerce in the course of the
6 commission or in furtherance of the commission of
7 the offense;

8 “(4) any visual depiction or obscene matter in-
9 volved in the offense has been mailed, or has been
10 shipped or transported in interstate or foreign com-
11 merce by any means, including by computer, or was
12 produced using materials that have been mailed, or
13 that have been shipped or transported in interstate
14 or foreign commerce by any means, including by
15 computer; or

16 “(5) the offense is committed in the special
17 maritime and territorial jurisdiction of the United
18 States or in any territory or possession of the
19 United States.”;

20 (2) in the analysis for the chapter, by inserting
21 at the end the following:

“1471. Use of obscene material or child pornography to facilitate offenses
against minors.”.

1 **SEC. 6. EXTRATERRITORIAL PRODUCTION OF CHILD POR-**
2 **NOGRAPHY FOR DISTRIBUTION IN THE**
3 **UNITED STATES.**

4 Section 2251 is amended—

5 (1) by striking “subsection (d)” each place it
6 appears in subsections (a), (b), and (c) and inserting
7 “subsection (e)”;

8 (2) by redesignating subsections (c) and (d), re-
9 spectively, as subsections (d) and (e); and

10 (3) by inserting after subsection (b) a new sub-
11 section (c) as follows:

12 “(c)(1) Any person who, in a circumstance described
13 in paragraph (2), employs, uses, persuades, induces, en-
14 tices, or coerces any minor to engage in, or who has a
15 minor assist any other person to engage in, any sexually
16 explicit conduct outside of the United States, its posses-
17 sions and Territories, for the purpose of producing any
18 visual depiction of such conduct, shall be punished as pro-
19 vided under subsection (e).

20 “(2) The circumstance referred to in paragraph (1)
21 is that—

22 “(A) the person intends such visual depiction to
23 be transported to the United States, its possessions,
24 or territories, by any means including by computer
25 or mail;

1 “(B) the person transports such visual depic-
2 tion to, or otherwise makes it available within, the
3 United States, its possessions, or territories, by any
4 means including by computer or mail.”.

5 **SEC. 7. STRENGTHENING ENHANCED PENALTIES FOR RE-**
6 **PEAT OFFENDERS.**

7 Sections 2251(d), 2252(b), and 2252A(b) of title 18,
8 United States Code, are each amended by inserting “chap-
9 ter 71,” immediately before each occurrence of “chapter
10 109A,”.

11 **SEC. 8. SERVICE PROVIDER REPORTING OF CHILD POR-**
12 **NOGRAPHY AND RELATED INFORMATION.**

13 (a) Section 227 of the Victims of Child Abuse Act
14 of 1990 (42 U.S.C. 13032) is amended—

15 (1) in subsection (b)(1)—

16 (A) by inserting “2252B,” after “2252A,”;

17 and

18 (B) by inserting “or a violation of section
19 1466A of that title,” after “of that title),”;

20 (2) in subsection (c), by inserting “or pursuant
21 to” after “to comply with”;

22 (3) in subsection (d)—

23 (A) by striking the heading and inserting
24 the following new heading: “Voluntary provision
25 of information by service providers”;

1 (B) by designating the current text of sub-
2 section (d) as paragraph (1); and

3 (C) by adding at the end of subsection (d)
4 the following new paragraph:

5 “(2) A provider of electronic communication
6 services or remote computing services described in
7 subsection (b)(1), which reasonably believes that it
8 has obtained knowledge of facts and circumstances
9 indicating that a violation of section 2251, 2251A,
10 2252, 2252A, 2252B, or 2260 of title 18, involving
11 child pornography (as defined in section 2256 of
12 that title), or a violation of section 1466A of that
13 title, may have occurred or will occur, may make a
14 report of such facts or circumstances to the Cyber
15 Tip Line at the National Center for Missing and Ex-
16 ploited Children, which shall forward that report to
17 the law enforcement agency or agencies previously
18 designated by the Attorney General under subsection
19 (b)(2). Except as provided in subsection (b)(1), the
20 Federal Government may not require the making of
21 any such report.”; and

22 (4) by amending subsection (f)(1)(D) to read as
23 follows:

24 “(D) where the report discloses a violation
25 of State criminal law, to an appropriate official

1 of a State or subdivision of a State for the pur-
2 pose of enforcing such State law.”.

3 (b) Section 2702 of title 18, United States Code is
4 amended—

5 (1) in subsection (b)—

6 (A) in paragraph (6)—

7 (i) by inserting “or” at the end of
8 subparagraph (A)(ii);

9 (ii) by striking subparagraph (B); and

10 (iii) by redesignating subparagraph

11 (C) as subparagraph (B);

12 (B) by redesignating paragraph (6) as
13 paragraph (7);

14 (C) by striking “or” at the end of para-
15 graph (5); and

16 (D) by inserting after paragraph (5) the
17 following new paragraph:

18 “(6) to the National Center for Missing and
19 Exploited Children, in connection with a report sub-
20 mitted thereto under section 227 of the Victims of
21 Child Abuse Act of 1990 (42 U.S.C. 13032); or”;
22 and

23 (2) in subsection (c)—

24 (A) by striking “or” at the end of para-
25 graph (4);

1 (B) by redesignating paragraph (5) as
2 paragraph (6); and

3 (C) by adding after paragraph (4) the fol-
4 lowing new paragraph:

5 “(5) to the National Center for Missing and
6 Exploited Children, in connection with a report sub-
7 mitted thereto under section 227 of the Victims of
8 Child Abuse Act of 1990 (42 U.S.C. 13032); or”.

9 **SEC. 9. ESTABLISHMENT OF SECURE DATABASE FOR IDEN-**
10 **TIFYING CHILD PORNOGRAPHY PRODUCED**
11 **WITH ACTUAL CHILDREN.**

12 (a) ESTABLISHMENT.—

13 (1) IN GENERAL.—The Attorney General shall
14 establish, and supervise the development and oper-
15 ation of, a comprehensive computerized database
16 (hereafter referred to as the “child pornography
17 identification database”) to facilitate the identifica-
18 tion of child pornography produced with actual chil-
19 dren and to facilitate the identification of perpetra-
20 tors.

21 (2) DATABASE INFORMATION ABOUT CHILD
22 PORNOGRAPHY.—The child pornography identifica-
23 tion database shall include at least the following in-
24 formation with respect to visual images produced
25 using actual children: identity of victims depicted;

1 reference to the agent or officer with knowledge of
2 the image, together with the case name and file
3 number, so that testimony can be offered identifying
4 the image; and other information necessary to meet
5 the objectives specified above.

6 (3) SUBMISSION OF INFORMATION FOR THE
7 DATABASE.—Federal law enforcement agencies shall
8 promptly provide to the Attorney General informa-
9 tion they obtain about identified victims of child por-
10 nography, including images known or believed to
11 have been produced using real children, and a point-
12 of-contact for further information with respect to
13 particular images. Any State or local law enforce-
14 ment agency or task force receiving Federal grants
15 under the Victims of Child Abuse Act of 1990 shall
16 also provide such information to the Attorney Gen-
17 eral. State and local agencies not receiving Federal
18 funds are encouraged to contribute such information
19 on a voluntary basis.

20 (4) AVAILABILITY OF INFORMATION IN THE
21 DATABASE.—Information contained in the child por-
22 nography identification database may be made acces-
23 sible only to the following persons under such terms
24 and conditions as the Attorney General may estab-
25 lish consistent with paragraph (5):

1 (A) Federal, State, and local law enforce-
2 ment officers and investigators working on child
3 pornography cases or cases involving child
4 abuse or suspected child abuse; and

5 (B) other agencies, entities, and individ-
6 uals as to whom the Attorney General deter-
7 mines there is good cause to permit access.

8 (5) PRIVACY PROTECTIONS.—The Attorney
9 General shall, by regulation or otherwise, establish
10 terms and conditions for the establishment and oper-
11 ation of, and access to, the database, which shall at
12 a minimum ensure that—

13 (A) access to the child pornography identi-
14 fication database is limited to authorized law
15 enforcement personnel working on child pornog-
16 raphy cases or cases involving child abuse or
17 suspected child abuse;

18 (B) the database is properly secured to
19 prevent unauthorized entry into, or access to,
20 the information contained in the database; and

21 (C) any information lawfully obtained from
22 the database will be protected from disclosure
23 except as may be necessary for the investigation
24 or prosecution of any offender or as may be au-
25 thorized by the Attorney General.

1 (6) COOPERATION WITH INTERNATIONAL LAW
2 ENFORCEMENT.—Nothing in this section shall pro-
3 hibit the Attorney General from contributing data to
4 an international child pornography identification
5 database on a reciprocal basis, provided that such
6 international database has safeguards as described
7 in paragraph (5).

8 (7) PENALTIES FOR UNAUTHORIZED ACCESS
9 AND DISCLOSURE.—Section 1030(a)(1) of title 18,
10 United States Code, is amended by inserting after
11 “Atomic Energy Act of 1954 or any restricted infor-
12 mation that is included in the database required by
13 section 2 of the Visa Entry Reform Act of 2001”
14 the following: “or any restricted information that is
15 included in the database required by section 9 of the
16 Child Obscenity and Pornography Prevention Act of
17 2002”.

18 (8) AUTHORIZATION OF APPROPRIATIONS.—
19 There are authorized to be appropriated to the De-
20 partment of Justice such sums as may be necessary
21 to carry out this section.

22 (b) Section 3509 of title 18, United States Code, is
23 amended by inserting at the end of subsection (d)(4) the
24 following sentence:

1 “This subsection does not prohibit contribution of in-
2 formation, or authorized access, to the child pornography
3 identification database established by section 9 of the
4 Child Obscenity and Pornography Prevention Act of 2002
5 or the use, in conformity with such section, of information
6 lawfully obtained from such database.”.

7 (c) Rule 803 of the Federal Rules of Evidence is
8 amended by adding at the end the following new para-
9 graph:

10 “(24) A statement identifying an image or
11 other record obtained from the child pornography
12 identification database established by section 9 of
13 the Child Obscenity and Pornography Prevention
14 Act of 2002, as shown by the testimony of the custo-
15 dian or other qualified witness, or by certification
16 that complies with Rule 902(4).”.

17 **SEC. 10. SEVERABILITY.**

18 If any provision of this Act, or the application of such
19 provision to any person or circumstance, is held invalid,
20 the remainder of this Act, and the application of such pro-
21 vision to other persons not similarly situated or to other
22 circumstances, shall not be affected by such invalidation.

○